### CONTENTS

Preface to the German Edition of 2014 page xi Preface to the English Edition xiii List of Abbreviations xv Table of Cases xx

# 1 Definition of the Question

- 1.1 Individualization of International Law? 1
- 1.2 Backlash in the Age of BRICSs?
- 1.3 The Legal Acquis Individuel: Structure of the Book 7
- 1.4 Scope of Investigation: "The Individual" 9

# 2 Historical Theory and Practice of the International Legal Status of the Individual 11

1

3

- 2.1 History of Ideas 11
- 2.2 Historical Legal Practice 25
- 2.3 Conclusion 33

# 3 The Doctrine of the International Legal Personality of the Human Being 35

- 3.1 Basic Terminology: International Legal Subject and International Legal Person 35
- 3.2 Traditional Classification of International Legal Subjects: The State and Everyone Else 42
- 3.3 Decoupling Substantive and Procedural Individual Rights under International Law 44
- 3.4 Legal Capacity and the Power to Create Law 50
- 3.5 Individualism, Monism, and Dualism 54
- 3.6 Conclusion 58

#### 4 International Individual Obligations 60

- 4.1 Definition of the Problem 60
- 4.2 Basic Categories 62

#### CONTENTS

- 4.3 Partially Corresponding Individual Claims 66
- 4.4 The Normal Case of Merely Indirect Imposition of Obligations upon Individuals through State Duties of Protection 67
- 4.5 Direct International Individual Obligations as an Exceptional Case 71
- 4.6 The Need to Close Regulatory Gaps as a Reason for and Limit to Direct International Individual Obligations 76
- 4.7 Further Limitation of Individual Rights by the Transnationalized Principle of Legality 79
- 4.8 Legal Bases of Specific Individual Obligations 85
- 4.9 Individual Obligation to Observe International Human Rights? 99
- 4.10 No "Fundamental Duties" of Individuals under International Law 110
- 4.11 Conclusion 113

### 5 The International Responsibility of the Individual 115

- 5.1 Foundations 115
- 5.2 The International Criminal Responsibility of Individuals 117
- 5.3 The International Non-criminal Responsibility of the Individual 152
- 5.4 Conclusion 164

# 6 Individual Rights Arising from International Responsibility 167

- 6.1 Definition of the Problem 167
- 6.2 Law of International (State) Responsibility 170
- 6.3 Human Rights and International Humanitarian Law: Remedy and Reparation 175
- 6.4 Rationale and Necessity of Individual Rights Arising from International Responsibility 189
- 6.5 Conclusion 192

# 7 Individual Rights and Duties in the Law of Armed Conflict 194

- 7.1 Individual Rights at the Primary Level 194
- 7.2 Secondary Rights of Individuals de lege lata 202
- 7.3 Secondary Claims of Individuals de lege ferenda 210
- 7.4 Ownership of Claims and Waiver 213

	<ul><li>7.5 Individual Enforcement of Secondary Claims in the Law of Armed Conflict 216</li></ul>
	7.6 Individual Obligations in the Law of Armed Conflict 220
	7.7 Conclusions 231
8	Protection against Acts of Violence and Forces of Nature 233
	8.1 Definition of the Problem 233
	<ul><li>8.2 Obligations Arising from the Responsibility to Protect</li><li>(R2P) 236</li></ul>
	8.3 Obligations to Protect in the Event of Natural Disasters 240
	8.4 Appraisal 246
	8.5 Conclusion 253
9	The International Legal Status of Victims of Crime 255
	9.1 The Duty to Prosecute and Punish 255
	9.2 The Legal Status of Victims in International Criminal Proceedings 269
	9.3 No Privatization of the Right of Punishment 276
10	Rights and Duties in Investment Protection Law 282
10	10.1 Definition of the Problem 282
	<ul><li>10.2 The Procedural Right of Investors under International Law: Power to Institute Arbitration Proceedings 285</li></ul>
	<ul> <li>10.3 Substantive Rights of Investors Arising from Contracts (Contract Claims) 293</li> </ul>
	10.4 Rights Arising from Inter-State Investment Protection Treaties: The "Direct"/"Derivative" Rights Debate 301
	10.5 Investor Rights Are Not Human Rights 318
	<ul><li>10.6 Practical Consequences of Individual Rights ("Direct Rights")</li><li>Arising from Treaties 321</li></ul>
	10.7 Secondary Claims of the Investor under International Law 331
	10.8 Obligations of Investors under International Law 339
	10.9 Conclusion 346
11	Individual Rights in Consular Law 348
	11.1 The Right to Consular Contact 349
	11.2 Rights of Detained Foreigners 350
	<ul><li>11.3 The Quality of Individual Rights Arising from Article 36 of VCCR 356</li></ul>

11.4 Enforcement of the Individual Right 365

- 11.5 Legal Consequences of the VCCR Violation, Especially in Criminal Proceedings 368
- 11.6 Conclusion 385

#### 12 Individual Rights in Diplomatic Protection 388

- 12.1 Foundations and Definition of the Question 388
- 12.2 Rights against the Injuring State: The End of the Vattelian Fiction 389
- 12.3 International Right to Diplomatic Protection vis-à-vis the Home State? 396
- 12.4 Conclusion 405
- 13 The Legal Basis for the International Legal Personality of the Individual and the Question of its Independence from the State 408
  - 13.1 States as Overlords? 408
  - 13.2 International Legal Personality Independent of the State? 412
  - 13.3 Treaty Basis 413
  - 13.4 Customary International Law 419
  - 13.5 General Principle of Law 421
  - 13.6 Natural Law 428
  - 13.7 Human Right 430
  - 13.8 Conclusion 431

### 14 Human Rights and Other Rights 436

- 14.1 Two Groups of International Individual Rights 436
- 14.2 Possibility of a Distinction 438
- 14.3 Desirability of the Distinction: Against the Trivialization of Human Rights 443
- 14.4 Consequences of the Distinction 447
- 14.5 Superposition of Human Rights and New Orientation of a Regime: The Example of Refugee Law 450
- 14.6 Divergences and Tensions between Simple Rights and Human Rights: The Example of International Labour Law 457
- 14.7 A Practical Conception of Human Rights 469

# 15 The Individualized Enforcement of International Law 472

- 15.1 Individuals as Guardians of the International Legal Order 472
- 15.2 Addressees of International Individual Rights 474

- 15.3 The Enforcement of International Individual Rights 479
- 15.4 International Individual Rights as the Foundation of the Emerging International Guarantee of Access to Justice 492

# 16 Direct Effect of Norms Establishing Individual Rights and Duties 495

- 16.1 Definition of the Problem 495
- 16.2 Terms and Distinctions 496
- 16.3 Direct Effect and the Substantive International Legal Status of the Individual 501
- 16.4 Traditional Criteria of Direct Effect 504
- 16.5 The Direct Effect of Secondary Law 507
- 16.6 Rejection of Direct Effect as a Mechanism of Legitimacy 514

16.7 Direct Effect as the Normal Case 519

16.8 Conclusion 523

### 17 The International Individual Right 526

- 17.1 Rights as a Paradigm of Modernity 527
- 17.2 The Postmodern Critique of Rights 530
- 17.3 The Lack of Global Citizenship 544
- 17.4 The Global Bourgeois 551

Bibliography 556 Index 591